IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1055 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHATT MOHANLAL PRABHASHANKAR - Appellant(s)
Versus
PRAFULBHAI RAMPRASSAD DAVE & 2 - Defendant(s)

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Appearance :
MR MG NAGARKAR for Appellant(s) : 1,
MR VC DESAI for Defendant(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 10/08/2006

ORAL JUDGMENT

1.Present appeal has been filed by the appellant herein - original plaintiff (hereinafter referred to as “the plaintiff”) challenging the judgment and decree passed by the learned City Civil Court,

Ahmedabad, dated 28.4.1988 passed in Civil Suit No. 3504 of 1983 in dismissing the said suit.

2.The plaintiff field Civil Suit No. 3504 of 1983 in the City Civil Court, Ahmedabad, for money decree for Rs. 18,861/- which includes the principal amount of the alleged promissory note and the interest. It appears that the plaintiff's claim was Rs. 12,794/-, towards the principal amount and rest of the amount was towards the interest on the said principal amount.

3.It was averred in the plaint that defendants No. 1 & 2 were the heirs of the deceased - Ramprasad Dave and that they were the members of the H.U.F and they had joint family business and that defendant No.1 was the Karta of the family and he was doing all the transactions. It was further averred that the defendants used to borrow money for the need and benefit of the joint family and used to execute promissory note and accordingly, the defendants settling the accounts of the previous transactions

cancelling the earlier promissory note, executed promissory note for Rs. 7000/- on 25.5.1979 and paid Rs. 4000/- in part payment thereof on 28.10.1980. It was further averred that for the other transaction settling the accounts cancelling the earlier promissory note, the defendants executed promissory note for Rs. 6,000 on 25.5.1979 and paid Rs. 200 on 17.3.1982 towards the same and a said promissory notes were executed by defendant No. 1 in his own hand writing, giving credit of the amount paid by the defendant, Rs. 12,794/- was due and payable including the interest of Rs. 7400/- and the defendants were liable to pay said amount to the plaintiff. It was further averred that the defendants were called upon to pay the said amount by notice dated 16.8.1983, which was replied by the defendants but did not comply with the requisitions therein and, therefore, plaintiff filed the aforesaid Civil Suit for recovery of the amount of aforesaid promissory note executed by the defendants. Thus, plaintiff prayed for the money decree for Rs. 18,861/- with 6% interest from the

date of the suit.

4.It appears from the record that the defendants did not file written statement to the suit but vide Exhs. 15, 18 and 19 defendants filed leave to defend. It was contended by the defendants that suit was barred by limitation. The defendants also denied the execution of the promissory note and it was further submitted that it was not a legal promissory note. It was further contended that no transaction as contended by the plaintiff, ever took place. According to the defendants, in reality, colour chemical goods worth Rs. 15,000/- were given to plaintiff in the year 1975, against which, the plaintiff had paid Rs. 7,000/- to the defendants and that no interest was payable on the said transaction and that the plaintiff had to realise the sale proceeds of those goods by selling the same for which, the plaintiff only for a show, had obtained the promissory note. According to the defendants, the plaintiff disposed of the said material and the sale proceeds of Rs. 15,000/- were

to be accounted for by the plaintiff but with a view to see that this amount is not paid and or is not required to be given adjustment, the suit came to be filed. It was specifically denied that there was a joint family of the Ramprasad Dave as alleged by the plaintiff. It was further averred that all the defendants were separate in residence as well as in business. It was further denied that the defendants were the members of the H.U.F. It was submitted that no amount had been advanced by the plaintiff for the business and benefit of the joint family of the defendants. It was submitted that the goods worth Rs. 15,000/- were entrusted to the plaintiff for the sale at a commission of 10% and the plaintiff had only paid Rs. 7,000/- to the defendants without any interest against those goods. It was further submitted that no account for the goods given to the plaintiff for sale on commission has been settled and the sale proceeds realised by the plaintiff have not been accounted or given credit by the plaintiff. It was submitted Rs. 4,000/- have not been paid to the defendants

towards the said promissory note.

5.The learned trial Court framed the issue at Exh. 34. On the plaintiff side one Mr. Mohanlal Prabhashanker Bhatt was examined at Exh. 39. The defendant No. 1 was examined at Exh. 55 and Defendant No. 2 - Janak Ramprassad was examined at Exh. 56. The documentary evidence is comprise of suit notice dated 16.8.1983 at Exh. 44, reply to the notice by defendants at Exh. 45, promissory notes dated 17.6.1986 at Exh. 40 & 41, promissory notes dated 25.5.1979 at Exh. 42 & 43 and copy of the writing dated 28.10.1980 executed by the plaintiff at Exh. 52. On appreciation of evidence, oral as well as documentary, the learned trial Court dismissed the suit by holding that the plaintiff has failed to prove that there was a H.U.F of Ramprasad Dave as alleged and that the assets and liabilities of the said business came to the hands of the defendants. Being aggrieved and dissatisfied by the judgment and order passed by the learned Trial Court in dismissing the suit, the

appellant herein - original plaintiff has filed the present appeal.

6.Shri M.G.Nagarkar, learned advocate appearing on behalf of the appellant, has vehemently submitted that the learned trial Court has materially erred in dismissing the suit by holding that there was no H.U.F of Ramprasad Dave and that has resulted into the miscarriage of justice. He has submitted that in view of the promissory note, which was in the hand of the defendant No. 1, the learned trial Court ought to have decreed the suit by passing the decree for an amount of Rs. 18,861/-. On the other hand, Shri V.C. Desai, learned advocate appearing on behalf of the defendants, while supporting the judgment and order passed by the learned trial Court has submitted that on appreciation of evidence, the learned trial Court has rightly held that there was no H.U.F of Ramprasad Dave after his death somewhere in the year 1966-67 and that nothing is on record to prove and show that the assets and liabilities of the said business came to

the hands of the defendants and therefore, it is requested to dismiss the appeal.

7. Heard the learned advocates appearing on behalf of the respective parties.

8. The claim of the plaintiff is with a pleading that the promissory note was executed for the need and benefit of the joint H.U.F and that the defendant No. 1 was the Karta of the family and he was doing all the transactions and the defendants used to borrow money for the need and benefit of their joint family and used to execute the promissory note. Thus, for the purpose of proving the claim and succeeding in the suit, the plaintiff is first required to prove that there was any H.U.F of Ramprasad Dave after his death continued and the business was carried on after his death and that liabilities and assets of the business came to the hands of the defendants. Considering the evidence on record, documentary as well as oral, it appears to the Court that the plaintiff has failed to prove

that the promissory note in question was for and on behalf of the H.U.F and/or for the need and benefit of the joint family. It is required to be noted that the it was the case of the plaintiff that in the year 1972-73 Rs. 7,000/- was borrowed by the defendant Nos. 1,2 and 3 for their business and the same was for the benefit and need of H.U.F. It is required to be noted that the said Ramprasad Dave died somewhere in the year 1966-67. Nothing is on record to prove and/or to show that the H.U.F business continued after the death of Ramprasad Dave i.e. in the year 1966-67. The plaintiff has failed to establish by satisfactory evidence that there was H.U.F of Ramprasad Dave after his death somewhere in the year 1966-67 and that the assets and liabilities of the said business came to the hands of the defendants or that the business of deceased Ramprasad Dave was carried on by the defendants as a family business. In fact, as rightly held by the learned trial Court, the plaintiff has not been able to establish that there was H.U.F of Ramprasad Dave after is death and the

defendants borrowed money from the plaintiff either for the benefit of the H.U.F. of Ramprasad Dave or for the joint family business of the defendants. In absence of any such evidence, the claim of the plaintiff on the ground that the amount was taken by the defendants for the benefit of the H.U.F. of Ramprasad Dave is not established. Under the circumstances, the plaintiff's suit is rightly dismissed as claim against the defendants on the aforesaid ground was not proved and/or established. When the basic foundation of H.U.F. of Ramprasad Dave after his death continued is not proved, the claim of the plaintiff on the aforesaid basis against the defendants is not sustainable and therefore, the suit is rightly dismissed. Hence, this Court is in complete agreement with the reasoning and findings of the learned trial Court.

9. For the reasons stated above, the appeal fails and is required to be dismissed and is, accordingly, dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

Ad-interim relief, if any, stands vacated forthwith.

10.It appears from the record that the original defendant No.1 deposited an amount of Rs.2000/- in the learned City Civil Court, Ahmedabad, pursuant to the order passed by the learned trial Court while granting leave to amend, which was deposited along with the purshis at Exh.32. It is also reported that the said amount is lying in the learned City Civil Court, Ahmedabad. Under the circumstances on dismissal of the appeal, at this stage, the original defendant No.1 would be entitled to get back the amount of Rs.2000/- deposited vide Exh.32. Under the circumstances, it is ordered that it will be open for the original defendant No.1 – Prafullabhai Ramprasad Dave to withdraw the amount of Rs.2000/- deposited vide Exh.32.

[M.R.SHAH, J.]

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